

GOVERNOR'S OFFICE

AUSTIN, TEXAS

APRIL 3, 1923.

Hon. S. L. Staples,
Secretary of State,
Austin, Texas.

PHB 1508

Dear Mr. Secretary:

House Bill No. 168, which seeks to cancel and hold for naught the contracts heretofore made by the Text Book Commission for the purchase of free text books for the children of Texas, is hereby vetoed for the following good and sufficient reasons:

1. Because the bill is in violation of Article 1, Section 10 of the Constitution of the United States, which provides that "no state shall pass any ex post facto law, or law impairing the obligation of contracts".

2. Because the bill is in violation of Article 1, Section 16, of the Constitution of the State of Texas, which provides that "no ex post facto law, or any other law, impairing the obligation of contracts, shall be made".

In violation of each of the above quoted constitutional provisions this bill operates backward in an effort to cancel a contract made in good faith and previous to its enactment. In other words, a legislative act, this bill, passed in 1923 purports to impair the obligation of a valid and binding contract made for the purchase of school books for the children of Texas, made in 1922, which the Constitution of both the nation and the State unquestionably will not permit.

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HOLDINGS OF THE
TEXAS STATE ARCHIVES

Court decisions, both State and Federal, are numerous, holding that the Legislature has no authority to pass a law impairing the obligation of a contract made by and between a duly authorized agent of the State and another contracting party.

3. The purpose of this bill is to absolve the State from the obligations of a contract previously made in good faith and expressed in proper and constitutional form by the legally constituted agents of the State. The State, which is presumed to do no wrong, should set the highest standard possible in its business dealings.

4. It is wrong in morals, as well as in law, for an individual, much less the State, to arbitrarily cancel a contract when neither fraud, collusion, nor improper influence are even alleged in connection with the making of the contract. None of these things has even been suggested as to the making of the contracts now under consideration.

5. By this bill the State endeavors to break its own contracts without giving to the contract holders the right to go into the open court to establish the validity of their contracts. Texas, up to this hour, has never yet sought to impair the obligation of any contract she ever made.

6. The courts of the country are the proper forums in which the legality of contracts should be tested. This bill, contrary to this well-known principle, shifts the question as to the validity of contracts from the legal forum to legislative halls. It is a dangerous innovation for the Legislature to usurp the functions of the courts.

7. Without question, the Texas State Text Book Commission that made the contracts sought to be cancelled by this bill, had the authority to enter into and make, as it did, contracts with

certain publishing companies for the purchase of free text books for the children of the State. The contracts in question were legally and constitutionally made, prepared by the Attorney General's Office, and approved by the State Department of Education.

8. In absence of fraud, corruption, or mistake, the Legislature has not the right in equity or in good conscience, to regard a contract made by the duly accredited agents of the State, as a "scrap of paper". Texas has not done so in the past. She should not begin it now.

9. This bill, extends contracts with certain publishing companies for a period of three years for the purchase of more than one hundred books to be used in the public schools of Texas without considering the merits of the books, the price for which the books were bought, or could now be bought, without requiring any bond from the publishing houses, as provided by law, and without even getting the promises of the publishing houses that they will furnish the books at the old contract prices.

10. It is bad public policy for the Legislature, with its many other duties, to assume the responsibility of selecting free text books for the children of Texas, as it has done by the passage of this bill.

11. This bill attempts to legalize the adoption made by the Text Book Commission in 1921 and at the same time make illegal the adoption of the Text Book Commission in 1922, when each adoption was made by the same Text Book Commission, with the same formalities and qualifications.

12. This bill purports to rectify the alleged errors made by the recent Text Book Commission in making certain contracts for free school books. As a matter of fact, however, the bill renews contracts for approximately one hundred books which were never at any time considered for any purpose by the recent Text Book Commission.

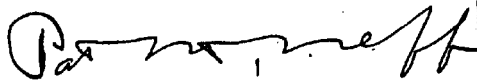
13. This bill, if it became a law, would have the effect of causing the contracts for approximately ninety per cent of the books now in use in the public schools of Texas, to expire September, 1925. The text book law does not permit the Text Book Commission to change more than sixteen and two-thirds per cent of the free school books in any one year. Therefore, when the Text Book Commission met in September 1925, it could under the law, renew only sixteen and two-thirds per cent of the expiring contracts. Should this bill become a law, this would leave approximately seventy-five per cent of the contracts expiring at that time, which the Text Book Commission under the law would have no authority to renew, and would give to the publishing companies holding these old contracts, the whip hand to make the Text Book Commission renew their contracts at the publishers' own prices and in keeping with their own stipulations. The State certainly should not put herself in this way under the dictates of those selling school books to the children of Texas.

14. The school teachers who composed the recent Text Book Commission were not of my selection; they were named and vouched for, as provided by law, by the Superintendent of Public Education; the President of the University of Texas; the President of the College of Industrial Arts; the President of the Southwest Texas State Normal, and the President of the Agricultural and Mechanical College, as the best qualified persons in all Texas to buy school books for the children of the State, and I am unwilling, without any facts tending even remotely to show any fraud, collusion, or bad faith in connection with the making of these contracts, to sacrifice the integrity and good name of the members of the Text Book Commission, or to say by the signing of this bill that the entire work of this legally constituted part and branch of the State government should be set aside and held for naught. To do so would set a dangerous precedent.

In considering this bill, which seeks to nullify the contracts made in December, 1922, by the State Text Book Commission, I am not considering the question of whether the Text Book Commission used bad judgment in exercising its legal power to contract for certain new text books, but whether the State of Texas, in the absence of proof of fraud, corruption, or mistake, shall nullify its own contracts legally entered into by its own agents created by law for that purpose and armed with full legal authority to make such contracts. There is but one conclusion to reach.

Therefore, this bill is hereby disapproved and vetoed and the contracts of the State made by its legal and duly constituted agents, will stand, so far as I am concerned.

Respectfully,

A handwritten signature in dark ink, appearing to read "Pat Neff", with a stylized flourish at the end.

Governor